

## BEFORE THE BOARD OF OPTOMETRY

### STATE OF IDAHO

In the Matter of the License of:	)	
	)	Case No. OPT-2007-1
	)	
JEFFREY C. JOHNSON, O.D.,	)	<b>STIPULATION AND</b>
License No. ODP-843	)	<b>CONSENT ORDER</b>
	)	
Respondent.	)	
_____	)	

The Idaho State Board of Optometry (the "Board") and Jeffrey C. Johnson, O.D. ("Respondent") agree to settle the matter as follows:

#### A. Jurisdiction

The Board regulates the practice of optometry in the State of Idaho in accordance with title 54, chapter 15, Idaho Code.

The Board has issued License No. ODP-843 to Respondent. Respondent's license is subject to the provisions of title 54, chapter 15, Idaho Code and the Board's rules at IDAPA 24.10.01, et seq. At all times material hereto, Respondent practiced optometry in Idaho.

#### B. Alleged Facts

B.1. On or about December 22, 2003, Respondent evaluated then-3-year-old H.W. for poor visual acuity. At the time of the initial evaluation, H.W. was developmentally delayed and did not demonstrate age-appropriate skills or behaviors of a typical 3-year-old. Respondent's records for the December 22, 2003, evaluation note that H.W. was "extremely hyper and uncooperative" and was unable to sit for a slit lamp examination. Respondent did not observe cataracts in H.W. using ophthalmoscopy or retinoscopy. Respondent diagnosed H.W. with high myopia and astigmatism.

B.2. On July 23, 2004, another optometrist in Respondent's office evaluated H.W. and was also unable to perform a slit lamp examination because H.W. was uncooperative. This optometrist was unable to detect cataracts in H.W.

B.3. Respondent next examined H.W. on May 9, 2005. H.W. was again unable to sit for a slit lamp examination and Respondent was unable to use an ophthalmoscope with H.W. because H.W. was not cooperative.

B.4. On July 13, 2005, Respondent examined H.W. pursuant to the prior established follow up plan of Respondent and noted that H.W. was again unable to sit for a slit lamp examination. In addition, Respondent's records also note that Respondent was only able to get a "fleeting view" using ophthalmoscopy. Respondent did not detect any cataracts at this time.

B.5. On or about February 1, 2006, H.W. was seen by a pediatric ophthalmologist who at this time discovered that H.W. had dense anterior and posterior and subcapsular nuclear cataracts which were subsequently removed.

### **C. Charges**

C.1 The Board alleges that, because Respondent was unable to adequately examine H.W. (a patient with significantly less than normal visual acuities), Respondent should have referred H.W. to an appropriate professional who might reasonably have been able to conduct a more complete examination.

C.2 The Board alleges that Respondent's conduct violated laws and rules requiring an optometrist to refer a patient who is suffering from any apparent or suspected pathological condition to a person competent and licensed to properly treat or diagnose the condition. See Idaho Code §§ 54-1510(4) and Board Rule 425.02. Violation of these provisions is grounds for discipline against Respondent's license to practice optometry in the State of Idaho, if proven.

### **D. Waiver of Procedural Rights**

I, Jeffrey C. Johnson, O.D., by affixing my signature hereto, acknowledge that:

D.1 I have read and understand the allegations pending before the Board, as stated above. I further understand that these allegations may constitute cause for disciplinary action upon my license to practice optometry in the State of Idaho, if proven. I disagree, however, with the charges set forth in Section C and with the assertion that I have violated the Board's laws or rules. I acknowledge, however, that the Board may be able to present evidence from which the

Board might conclude that a violation occurred. Rather than dispute this by pursuing a formal hearing, and in order to avoid the attending costs and uncertainties of litigation, I am voluntarily entering into this agreement to resolve this matter.

D.2 I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to testify myself; the right to reconsideration of the Board's orders; the right to judicial review of the Board's orders; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of optometry in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this Stipulation as a resolution of the pending allegations for the reasons and upon the basis and denials set forth in paragraph D.1, above.

D.3 I understand that in signing this Stipulation I am enabling the Board to impose required action by me without further process.

#### **E. Action**

E.1 Respondent shall pay investigative costs and attorney fees incurred by the Board in this matter in the amount of Eight Hundred and Four and No/100 Dollars (\$804.00) within thirty (30) days of the entry of the Board's Order.

E.2. Within six (6) months of the date of entry of the Board's Order, Respondent shall obtain three (3) hours of Board-approved continuing education focusing on examining infants and children. Respondent shall submit proof of attendance to the Board within 30 days of attendance. Respondent may also satisfy this requirement by submitting to the Board, prior to or at the meeting at which the Board considers this Stipulation, documentation verifying that Respondent has obtained such continuing education after January 1, 2008 but prior to the date of entry of the Board's order. The continuing education referenced in this section shall be in addition to any continuing education Respondent is required to obtain to maintain his license.

E.3. All costs associated with compliance with the terms of this Stipulation are the sole responsibility of Respondent.

E.4. The violation of any of the terms of this Stipulation by Respondent may warrant disciplinary action by the Board. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

#### **F. Presentation of Stipulation to Board**

F.1. The Board's prosecutor shall present this Stipulation to the Board with a recommendation for approval.

F.2 The Board may accept, modify with Respondent's approval, or reject this Stipulation. If the Board rejects the Stipulation, as written, an administrative Complaint may be filed with the Board. Respondent waives any right Respondent may have to challenge the Board's impartiality to hear the allegations in the administrative Complaint based on the fact that the Board has considered and rejected this Stipulation. Respondent does not waive any other rights regarding challenges to Board members.

F.3 If the Board rejects this Stipulation then, except for Respondent's waiver set forth in Paragraph F.2, this Stipulation shall be regarded as null and void, and it and any admissions in this Stipulation and negotiations preceding the signing of this Stipulation will not be admissible at any subsequent disciplinary hearing.

F.4 Except for Paragraph F.2 which becomes effective when Respondent signs this Stipulation, this Stipulation shall not become effective until it has been approved by a majority of the Board and a Board member signs the attached Order.

#### **G. Violation of Stipulation and Consent Order**

G.1 If Respondent violates this Stipulation and Consent Order, the violation shall be considered grounds for discipline and the Board may impose such discipline pursuant to the following procedure:

The Chief of the Bureau of Occupational Licenses shall schedule a hearing before the Board to assess whether Respondent has violated this Stipulation and Consent Order. The Chief shall also serve notice of the hearing and charges to Respondent and to Respondent's attorney, if any. Within fourteen (14) days after the notice of the hearing and charges is served, Respondent

may submit a response to the allegations. If Respondent does not submit a timely response to the Board, the alleged violations will be deemed admitted.

At the hearing, the Board and Respondent may submit evidence and present oral argument based upon the record in support of their positions. Unless otherwise ordered by the Board, the evidentiary record before the Board shall be limited to evidence relevant to whether Respondent has violated this Stipulation and Consent Order. At the hearing the facts and substantive matters related to the violations described in Section A shall not be at issue.

At the hearing, the Board may impose discipline, which may include the suspension or revocation of Respondent's license, the imposition of fines, the recovery of costs and attorney fees incurred by the Board and/or other conditions or limitations upon Respondent's practice.

G.2 This Stipulation and Consent Order is the resolution of a contested case and is a public record.

G.3 This Stipulation contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

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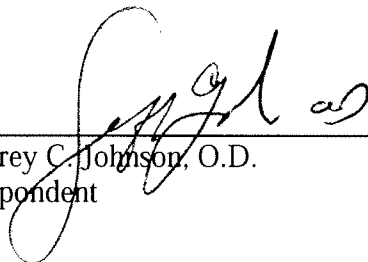
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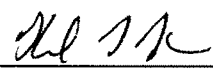
I have read the above Stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I am waiving certain rights accorded me under Idaho law. I understand that the Board may either approve this Stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this Stipulation according to the aforementioned terms, and I hereby agree to the above Stipulation for settlement. I understand that if the Board approves this Stipulation subject to changes, and the changes are acceptable to me, the Stipulation will take effect and an order modifying the terms of the Stipulation will be issued. If the changes are unacceptable to me or the Board rejects this Stipulation, it will be of no effect.

DATED this 19<sup>th</sup> day of August, 2008.

  
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Jeffrey C. Johnson, O.D.  
Respondent

I recommend that the Board enter an Order based upon this Stipulation.

DATED this 20<sup>th</sup> day of August, 2008.

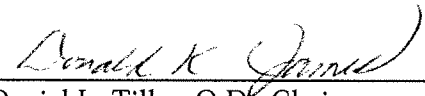
STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
By:   
\_\_\_\_\_  
Karl T. Klein  
Deputy Attorney General

### ORDER

Pursuant to Idaho Code § 54-1509, the foregoing is adopted as the decision of the Board of Optometry in this matter and shall be effective on the 22<sup>nd</sup> day of August, 2008.

**IT IS SO ORDERED.**

IDAHO STATE BOARD OF OPTOMETRY

By:   
\_\_\_\_\_  
~~Daniel E. Tiller~~, O.D., Chair  
Donald K James

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29<sup>th</sup> day of August, 2008, I caused to be served a true and correct copy of the foregoing by the following method to:

Jeffrey C. Johnson, O.D.  
7960 W. Rifleman  
Boise, ID 83704

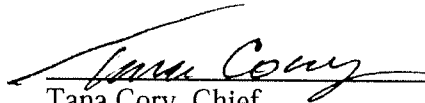
- ☒ U.S. Mail
- ☐ Hand Delivery
- ☒ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: \_\_\_\_\_

Karl T. Klein  
Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: \_\_\_\_\_
- ☒ Statehouse Mail

Steven J. Hippler  
Givens Pursley LLP  
PO Box 2720  
Boise, Idaho 83701-2720

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: 208-388-1300

  
Tana Cory, Chief  
Bureau of Occupational Licenses